

September 14, 2016

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Re: Request Under Freedom of Information Act / Expedited Processing Requested

To Whom It May Concern:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and its implementing regulations.¹ The Request is submitted by the American Civil Liberties Union and the American Civil Liberties Union Foundation (collectively “ACLU”).²

The ACLU seeks disclosure of information concerning Section 702 of the Foreign Intelligence Surveillance Act (“FISA”), 50 U.S.C. § 1881a. This warrantless surveillance authority is scheduled to expire in 2017, and Congress has already begun to hold hearings that will inform the debate about whether to reauthorize Section 702. Additional information about the breadth of Section 702, the ways in which this surveillance is used, and its impact on American citizens and residents is critical to this public debate.

* * *

On July 10, 2008, President Bush signed into law the Foreign Intelligence Surveillance Act Amendments Act of 2008 (“FISA Amendments Act” or “FAA”). This legislation effectively authorized the secret warrantless surveillance program begun by President Bush in 2001, permitting the National Security Agency (“NSA”) to collect the contents of international communications, including those of Americans. Section 702 is one of the most sweeping surveillance authorities ever enacted by the Congress, implicating core privacy and free speech rights of Americans.

¹ See 28 C.F.R. § 16.1 (Department of Justice); 32 C.F.R. § 1700.1 (Office of the Director of National Intelligence); 32 C.F.R. § 286 (Department of Defense); and 32 C.F.R. § 1900 (Central Intelligence Agency).

² The American Civil Liberties Union Foundation is a 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, and educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union is a separate non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

Section 702 permits the government to obtain the international communications of Americans without a warrant whenever intelligence officials are targeting “persons reasonably believed to be located outside the United States to acquire foreign intelligence information.” 50 U.S.C. § 1881a(a).³ In practice, the government has used this authority to seize and search the communications of Americans and others on an immense scale. In 2015, the government relied on Section 702 to obtain the communications of 94,368 targets under a single court order.⁴

Section 702 surveillance does not require an individualized determination of probable cause or any suspicion of wrongdoing at all—and judicial review of Section 702 surveillance is extremely limited. The government presents annual certifications to the FISC, without identifying its individual targets or the various places and facilities at which its surveillance will be directed. 50 U.S.C. §§ 1881a(a), 1881a(g)(4). The statute’s safeguards are limited to the requirement that each agency adopt “targeting” and “minimization” procedures, which must be “reasonably designed . . . to minimize the acquisition and retention, and prohibit the dissemination” of U.S. person information. 50 U.S.C. §§ 1881a(e), 1801(h)(1), 1821(4)(A). The FISC’s role is limited to approving these general procedures and the annual certifications; it does not supervise the surveillance or review the government’s interception of individual Americans’ communications.

The government implements its Section 702 authority through two programs. Under the “PRISM” program, the government compels electronic communications providers—like Apple, Facebook, and Microsoft—to furnish communications sent to or from a target’s account, such as an email account used by a non-U.S. person. Under the second program, called “Upstream” surveillance, the government intercepts international telephone calls and internet communications as they are routed across communications networks inside the United States. With respect to internet communications, the government compels providers to search international traffic in bulk for communications that are to, from, or about the NSA’s targets. *See* Charlie Savage, *N.S.A. Said to Search Content of Messages to and from the U.S.*, N.Y. Times, Aug. 8, 2013.

Although the statute authorizes surveillance targeting non-U.S. persons abroad, it permits the acquisition, retention, and analysis of Americans’ communications with the government’s thousands of overseas targets. The government may acquire such information when a U.S. person is in communication with a non-U.S. person targeted under Section 702, or because a U.S. person was mistakenly targeted. Media reports based on government documents indicate that Section 702 surveillance intercepts a large number of communications from non-targets, including so-called “incidental” and “inadvertent” collection of Americans’ communications. *See, e.g.,* Barton Gellman et al., *In NSA-Intercepted Data, Those Not Targeted Far Outnumber the Foreigners Who Are*, Wash. Post, July 5, 2014.

Since its enactment in 2008, the government’s authority under Section 702 has been the subject of widespread concern. Eric Lichtblau & James Risen, *Officials Say U.S. Wiretaps Exceeded Law*, N.Y. Times, Apr. 15, 2009. These concerns were vindicated by the public

³ The phrase “foreign intelligence information” is defined broadly to include, among other things, information concerning terrorism, national defense, and foreign affairs. 50 U.S.C. § 1801(e)(1).

⁴ ODNI, Statistical Transparency Report (2016), <http://bit.ly/1To2YK2>.

disclosure of many records describing the government's interpretation and implementation of the program in 2013. *See, e.g.,* Barton Gellman & Laura Poitras, *U.S., British Intelligence Mining Data From Nine U.S. Internet Companies in Broad Secret Program*, Wash. Post, June 7, 2013; James Ball & Spencer Ackerman, *NSA Loophole Allows Warrantless Search for US Citizens' Emails and Phone Calls*, Guardian, Aug. 9, 2013. The government has since disclosed and/or declassified additional information concerning the program. In addition, the Privacy and Civil Liberties Oversight Board ("PCLOB") has held public hearings and published a report examining the collection of electronic communications under Section 702, and providing analysis and recommendations regarding its implementation. *See* PCLOB, *Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act*, July 2, 2014, <https://www.pclob.gov/library/702-Report.pdf>.

However, the public is still in the dark about basic facts concerning the breadth of Section 702 and the ways in which this surveillance is exploited to investigate American citizens and residents. For example, the government has not disclosed the numbers of communications involving Americans that are subject to Section 702 surveillance.⁵ Nor have the FBI, NSA, and CIA disclosed the complete sets of rules their agents and analysts must follow when they rely on Section 702 surveillance to investigate Americans.

In 2017, Congress will consider reauthorization of the surveillance authorities in the FAA, including Section 702. As part of that debate, it is crucial that Congress and the public fully understand the impact of these authorities on the privacy of Americans. Indeed, Congress has already begun to hold public hearings concerning Section 702. This Request seeks records that will illuminate how the agencies responsible for implementing Section 702 interpret its authority, how Section 702 authority is being used, and what safeguards exist to protect Americans' privacy.

I. Records Requested

1. Section 702 targeting and minimization procedures, or amendments thereto, submitted to the FISC on or after January 1, 2015, including the procedures identified, described, or excerpted in the FISC Memorandum Opinion and Order dated November 6, 2015.⁶
2. Section 702 certifications and any related filings, memoranda, affidavits, or attachments submitted to the FISC on or after January 1, 2015.
3. The "Summary of Notable Section 702 Requirements" submitted to the FISC, and all documents referenced in or submitted with that summary.⁷

⁵ Letter from H. Comm. on the Judiciary to Hon. James R. Clapper (Apr. 22, 2016), https://www.brennancenter.org/sites/default/files/legal-work/Letter_to_Director_Clapper_4_22.pdf.

⁶ This opinion is available at https://www.dni.gov/files/documents/20151106-702Mem_Opinion_Order_for_Public_Release.pdf.

⁷ This record is identified in the Recommendations Assessment Report, Privacy and Civil Liberties Oversight Board at 20 (Feb. 5, 2016), https://www.pclob.gov/library/Recommendations_Assessment_Report_20160205.pdf ("PCLOB Recommendations Assessment").

4. Policies, procedures, or guidance addressing the querying, review, or use of information acquired under Section 702 in investigations, legal proceedings, or administrative actions against United States persons. This request includes, but is not limited to:
 - a. The policy described by ODNI General Counsel Robert Litt in remarks delivered on February 4, 2015. This request seeks the full records reflecting that policy, and any modification of it, not merely those portions of the records that have already been publicly released.⁸
 - b. The three sets of NSA procedures addressing the use of U.S. person identifiers for queries of communications collected under Section 702, as described in the NSA OIG report dated February 20, 2015.⁹
5. Amicus briefs submitted to the FISC or FISCR addressing Section 702 surveillance, including but not limited to the brief(s) filed by amicus curiae Amy Jeffress pursuant to FISC orders dated August 13 and September 16, 2015.¹⁰
6. Formal or informal FISC submissions by the government addressing Section 702 surveillance and the government's discovery, *Brady*, or preservation obligations.
7. Estimates, charts, studies, or other records reflecting the number of communications filtered, screened, searched, acquired, collected, or retained using Section 702 surveillance for any period beginning on or after January 1, 2013. This request includes estimates that pertain to particular subsets of communications—for instance, those collected via PRISM or Upstream; communications to or from U.S. persons; wholly domestic communications; “about” communications; or multi-communication transactions (“MCTs”).¹¹
8. Inspector General reports addressing Section 702 surveillance that are dated on or after January 1, 2013, and have not previously been publicly released, including but not limited to the NSA Office of the Inspector General report dated October 29, 2013.

⁸ Versions of Mr. Litt's remarks are publicly available on the ODNI website and in the public transcript of those remarks as delivered. *See* ODNI General Counsel Robert Litt's As Prepared Remarks on Signals Intelligence Reform at the Brookings Institute, Feb. 4, 2015, <http://icontherecord.tumblr.com/post/110632851413/odni-general-counsel-robert-litts-as-prepared>; *see also U.S. Intelligence Community Surveillance One Year After President Obama's Address*, Brookings Institute, Feb. 4, 2015, http://www.brookings.edu/~media/events/2015/02/04-surveillance/20150204_intelligence_surveillance_litt_transcript.pdf.

⁹ NSA OIG, Implementation of §215 of the USA PATRIOT Act and §702 of the FISA Amendments Act of 2008 at 104–05, Feb. 20, 2015, <https://assets.documentcloud.org/documents/2712306/Savage-NYT-FOIA-IG-Reports-702-2.pdf>.

¹⁰ These FISC orders are described in the opinion available at: https://www.dni.gov/files/documents/20151106-702Mem_Opinion_Order_for_Public_Release.pdf.

¹¹ The government has publicly released such estimates previously. *See, e.g., [Redacted]*, No. [Redacted], 2011 WL 10945618 (FISC Oct. 3, 2011).

9. The following policies, procedures, and guidance addressing Section 702 surveillance:
- a. The most recent version of the Attorney General guidelines mandated by 50 U.S.C. § 1881a(f).
 - b. The FBI Standard Minimization Procedures Policy Implementation Guidelines dated October 31, 2008, or the most recent superseding version of those procedures.¹²
 - c. The “NSA internal procedures” referenced or described in the Report to the Intelligence Oversight Board on NSA Activities dated March 4, 2013.¹³
 - d. The most recent version of the NSA Standard Operating Procedures for oversight, adjudication, and targeting FAA § 702 functions and training.¹⁴
 - e. The most recent version of the NSA Guidance to Analysts on Obligation to Review Data Under Protect America Act and the FISA Amendments Act.¹⁵
 - f. The most recent version of the NSA “FAA 702 Curriculum,” including the training courses titled “FISA Amendments Act (FAA) 702” (also known as “OVSC1203”), “FAA 702 Practical Applications,” “FAA 702 Adjudicator Training,” and “FAA 702 Targeting Adjudication.”¹⁶

* * *

We request that responsive electronic records be provided electronically in their native file format. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and in separate, Bates-stamped files.

¹² *See* <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/FAAFBI0536.pdf> (referencing “the FBI’s SMP Policy Implementation Guidelines, dated October 31, 2008, and which . . . will be updated to include modifications to the SMP as they pertain to Section 702 data”).

¹³ *See* NSA OIG, Report to the Intelligence Oversight Board on NSA Activities Fourth Quarter 2012 at 11 (Mar. 4, 2013), https://www.nsa.gov/public_info/_files/IOB/FY2013_1Q_IOB_Report.pdf.

¹⁴ These records are identified in NSA OIG, Revised Report on the Special Study, Assessment of Management Controls Over FAA §702 at 27, Mar. 29, 2013, <https://assets.documentcloud.org/documents/2712306/Savage-NYT-FOIA-IG-Reports-702-2.pdf>.

¹⁵ This record is identified in NSA OIG, Revised Report on the Special Study, Assessment of Management Controls Over FAA §702 at 32, Mar. 29, 2013, <https://assets.documentcloud.org/documents/2712306/Savage-NYT-FOIA-IG-Reports-702-2.pdf>.

¹⁶ These records are identified in NSA OIG reports, including: NSA OIG, Implementation of §215 of the USA PATRIOT Act and §702 of the FISA Amendments Act of 2008 at 104–05, Feb. 20, 2015, <https://assets.documentcloud.org/documents/2712306/Savage-NYT-FOIA-IG-Reports-702-2.pdf>; NSA OIG, Revised Report on the Special Study, Assessment of Management Controls Over FAA §702 at 35–37, Mar. 29, 2013, <https://assets.documentcloud.org/documents/2712306/Savage-NYT-FOIA-IG-Reports-702-2.pdf>.

II. Request for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and the statute's implementing regulations. There is a "compelling need" for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. § 1700.12(c)(2). In addition, the records sought relate to a "breaking news story of general public interest." 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when "the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity"); *see also* 32 C.F.R. § 286.4(d)(3)(ii)(A).

A. The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute and relevant regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. § 1700.2(h)(4). *See ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public-interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" (internal citation omitted)); *see also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference—whose mission is to "disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws"—to be "primarily engaged in the dissemination of information").

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU's mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU's regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series. The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news. ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹⁷

¹⁷ *See, e.g.,* Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, *Guardian*, March 17, 2016 (quoting ACLU attorney Nate Wessler); Peter Finn & Julie Tate, *CIA Mistaken on 'High-Value' Detainee, Document Shows*, *Wash. Post*, June 16, 2009 (quoting ACLU attorney Ben Wizner).

The ACLU website specifically includes features on information about actual or alleged government activity obtained through FOIA.¹⁸ For example, the ACLU maintains an online archive of surveillance-related documents released via FOIA as well as other sources.¹⁹ Similarly, the ACLU maintains an online “Torture Database,” which is a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.²⁰ The ACLU’s webpage concerning the Office of Legal Counsel torture memos obtained through FOIA contains commentary and analysis of the memos; an original, comprehensive chart summarizing the memos; links to web features created by ProPublica (an independent, non-profit, investigative-journalism organization) based on the ACLU’s information gathering, research, and analysis; and ACLU videos about the memos.²¹ In addition to its websites, the ACLU has produced an in-depth television series on civil liberties, which has included analysis and explanation of information the ACLU has obtained through FOIA.

The ACLU plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use, and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.²²

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The records sought are urgently needed to inform the public about actual or alleged federal government activity. The records pertain to the warrantless collection of Americans’ international communications, and to the government’s interpretation and implementation of a controversial federal statute that impacts Americans’ privacy and free speech rights. Disclosure is necessary because—despite official and unofficial disclosures since June 2013—there remains a significant and conspicuous knowledge gap when it comes to the impact of Section 702 surveillance on Americans. This information is urgently needed to inform the ongoing public and congressional debate about whether the government’s surveillance authority should be narrowed, amended, or otherwise limited in advance of the reauthorization vote in 2017.

The requested records relate to a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence,” 28 C.F.R. § 16.5(d)(1)(iv), and to a “breaking news story of general public interest

¹⁸ See, e.g., <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <http://www.aclu.org/mappingthefbi>; <http://www.aclu.org/patriotfoia>; <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>.

¹⁹ <https://www.aclu.org/nsa-documents-search>.

²⁰ <http://www.torturedatabase.org>.

²¹ http://www.aclu.org/safefree/general/olc_memos.html.

²² In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters.

that concerns actual or alleged Federal government activity.” See 32 C.F.R. § 286.4(d)(3)(ii)(A); 28 C.F.R. § 16.5(d)(1)(ii).

The government’s intrusive electronic surveillance power has been a significant matter of public concern and media interest for many years, particularly after the revelation of the NSA’s warrantless wiretapping program. The legislation that emerged out of that controversy—the FAA—has been the subject of widespread interest and debate since the moment it was introduced. Indeed, in the weeks leading up to its enactment, the law was the subject of particularly intense coverage. See, e.g., Editorial, *Mr. Bush v. the Bill of Rights*, N.Y. Times, June 18, 2008.

The eventual passage and enactment of the FAA garnered similarly widespread coverage and attention. See Peter Grier, *White House Scores Key Victory on Government Eavesdropping*, Christian Science Monitor, July 10, 2008; Antonio Vargas, *Obama Defends Compromise on New FISA Bill*, Wash. Post, July 4, 2008. In 2009, *The New York Times* reported that the NSA was using its FAA powers to vacuum up U.S. communications by the millions, that it was potentially abusing its sweeping FAA power, and that it was possibly “overcollecting” purely domestic communications in a systematic manner. See Eric Lichtblau & James Risen, *Officials Say U.S. Wiretaps Exceeded Law*, N.Y. Times, Apr. 15, 2009. Later that year, similar reports that the NSA was “overcollecting” Americans’ personal emails again drew significant media attention. See James Risen & Eric Lichtblau, *E-Mail Surveillance Renews Concerns in Congress*, N.Y. Times, June 16, 2009. Reauthorization of the FAA’s surveillance provisions in 2012 generated increased media attention. See Robert Pear, *Federal Power to Intercept Messages Is Extended*, N.Y. Times, Dec. 28, 2012.

Media attention surged in June 2013, when two classified National Security Agency collection programs were reported by the press. See, e.g., Timothy B. Lee, *Here’s Everything We Know About PRISM To Date*, N.Y. Times, June 12, 2013. Widespread coverage has continued with additional disclosures from both official and unofficial sources. See, e.g., Nicole Perloth et al., *N.S.A. Able to Foil Basic Safeguards of Privacy on the Web*, N.Y. Times, Sept. 5, 2013; Spencer Ackerman & James Ball, *NSA Performed Warrantless Searches on Americans’ Calls and Emails-Clapper*, Guardian, Apr. 1, 2014. Concurrently, the government declassified and released portions of a FISC opinion addressing the government’s Section 702 authority, which criticized the government’s misrepresentations and unauthorized collection of Americans’ communications. See Ellen Nakashima, *NSA Gathered Thousands of Americans’ Emails Before Court Ordered it To Revise its Tactics*, Wash. Post, Aug. 21, 2013. The government has periodically declassified and released additional information concerning the authorities and operations of its Section 702 program. See Stuart Dredge, *US Intelligence Services to go ‘On the Record’ With New Tumblr Blog*, Guardian, Aug. 22, 2013.

Over the past year, the national news stories have continued to highlight the significance of Section 702 surveillance programs for Americans’ privacy rights. See, e.g., Spencer Ackerman, *FBI Quietly Changes its Privacy Rules for Accessing NSA Data on Americans*, Guardian, Mar. 10, 2016. Questions about the scope, legality, and wisdom of the government’s surveillance under the both “PRISM” and “Upstream” collection remain hotly debated in the media and in Congress. See, e.g., Spencer Ackerman, *FBI Quietly Changes Data Rules for Accessing Data on Americans*, Guardian, March 10, 2016; Jenna McLaughlin, *Privacy Groups Challenge Director of National Intelligence to Uphold Transparency Promise*, The Intercept,

Oct. 29, 2015. The public interest will grow as the expiration date approaches. *See, e.g.*, Julian Hattem, *Spy Critics Eye Next Targets*, The Hill, July 3, 2015; Spencer Ackerman, *Rand Paul Allies Plan New Surveillance Reforms to Follow USA Freedom Act*, Guardian, June 2, 2015.

As the sustained media interest concerning Section 702 surveillance clearly attests, the subject of the Request is a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence,” 28 C.F.R. § 16.5(d)(1)(iv). Moreover, ongoing official and unofficial disclosures concerning Section 702 and the looming reauthorization debate constitute a “breaking news story of general public interest.” 32 C.F.R. § 286.4(d)(3)(ii)(A).

Accordingly, expedited processing should be granted.

III. Application for Waiver or Limitation of Fees

A. Release of the records is in the public interest.

We request a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the United States government’s operations or activities and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); and 32 C.F.R. § 1700.6(b)(2).

As discussed above, numerous news accounts reflect the considerable public interest in the requested records. Given the ongoing and widespread media attention to this issue, the records sought by the Request will significantly contribute to the public understanding of the operations and activities the agencies that are responsible for implementing Section 702. *See* 32 C.F.R. § 286.28(d); 28 C.F.R. § 16.11(k)(1)(i); 32 C.F.R. § 1700.6(b)(2); 32 C.F.R. § 1700.2(h)(4). In addition, disclosure is not in the ACLU’s commercial interest. As described above, any information disclosed as a part of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’”) (citation omitted); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not secrecy, is the dominant objective of the Act,” quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

B. The ACLU qualifies as a representative of the news media.

A waiver of search and review fees is warranted because the ACLU qualifies as a “representative of the news media” and the requested records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 32 C.F.R. § 1900.02(h)(3); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d). Accordingly, fees associated with the processing of this request should be “limited to reasonable standard charges for document duplication.”

The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that

work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is a “representative of the news media” for the same reasons that it is “primarily engaged in the dissemination of information.” *See Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for FOIA purposes). The ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Def.*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at *3 (D. Conn. May 14, 2012). *See also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).²³

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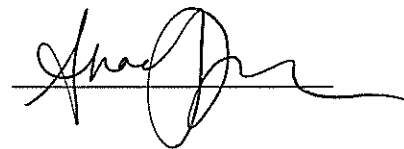
Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 1900.21(d); 28 C.F.R. § 16.5(e)(4); 32 C.F.R. § 286.4(d)(3); 32 C.F.R. §1700.12(b).

If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526.

I certify that the foregoing information provided in support of the request for expedited processing is true and correct to the best of my knowledge and belief.

Executed on the 14th day of September, 2016.

Sincerely,



²³ In October 2015, the Department of State granted a fee waiver with respect to a request for documents relating to Executive Order 12,333. In October 2013, the Department of State granted a fee waiver with respect to a request for documents relating to the government’s targeted-killing program. In April 2013, the DOJ National Security Division granted a fee waiver with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee waiver with respect to a FOIA request for documents related to national security letters issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted a fee waiver request related to the same FOIA request issued to the DOJ.

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